

United States Senate
WASHINGTON, DC 20510

April 19, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
Department of Justice

The Honorable Christopher Wray
Director
Federal Bureau of Investigation

Dear Attorney General Garland and Director Wray:

On September 26, 2022, we wrote to you about a Federal Bureau of Investigation (FBI) whistleblower, former FBI Special Agent Stephen M. Friend, and his allegations that the FBI violated policy and procedure in active domestic terrorism assessments and investigations. Former Special Agent Friend alleged that when he raised concerns with his FBI supervisors, Senior Supervisory Resident Agent Greg Federico, Assistant Special Agent in Charge Coult Markovsky, Assistant Special Agent in Charge Sean Ryan, and Special Agent in Charge Sherry Onks, they questioned whether he had a future with the FBI. They later suspended his security clearance and escorted him out of his assigned FBI Field Office. Since our letter, you have failed to provide a substantive response. We write today with additional acts of apparent wrongdoing by the FBI.

Recently, our offices were provided the enclosed FBI, Inspection Division Notification form which was provided to former Special Agent Friend. The Notification form noted that he “is not to discuss this matter with anyone other than the Inspection Division’s Internal Affairs Section (IAS), OPR [Office of Professional Responsibility], the Human Resources Division’s Office of Disciplinary Appeals, the FBI’s EAP [Employee Assistance Program], the FBI’s Ombudsman, or an attorney who has signed the appropriate Nondisclosure Agreement.” This advisement failed to include the “anti-gag” provision language as required by the Consolidated Appropriations Act, 2023.¹ The Consolidated Appropriations Act provides that no appropriated funds may be used to enforce a nondisclosure agreement or other restrictive policy, form, or agreement that does not specifically allow for lawful, protected disclosures and that each policy, form, or agreement must use specific language apprising the employee of their rights to make

¹ Pub. L. No. 117-328; *see also* 5 USC § 2302(b)(13).

such disclosures.² The prohibitions on disclosures listed in the Notification form also fail to recognize 5 U.S.C. § 7211 and the right of employees “to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”³ Accordingly, the Notification form violates federal law.

Specifically, the anti-gag provision prohibits the use of government funds to implement or enforce any nondisclosure policy, form, or agreement if it does not contain the following statement:

‘These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.’⁴

In addition to the unlawful notice, former Special Agent Friend has alleged that the FBI also unlawfully refused to provide him with copies of his firearms training records. Former Special Agent Friend alleged he communicated with the Firearms Training Unit (FTU) on January 9, 2022, to obtain copies of his firearms training records which he needed in order to submit an application for new employment. FTU allegedly promised they would send the records; however, former Special Agent Friend alleged that a short time later FTU contacted him and said the Unit’s legal counsel advised that they could not furnish him with his training records.

Even after former Special Agent Friend jumped through the FTU’s bureaucratic hoops, he still alleged that they would not furnish him with a copy of his firearm training records he was entitled to receive by law after multiple requests.⁵ He has alleged that it was not until after several months passed and he sought help from attorneys, the DOJ Office of the Inspector General, and ultimately was forced to resign that he was finally provided with his training records. As referenced above, former Special Agent Friend had informed our staff that he needed to submit these records as part of an application for new employment. FTU’s alleged actions caused him an unnecessary financial burden and prevented him from providing for his

² Pub. L. No. 117-328.

³ 5 USC § 7211.

⁴ *Id.*

⁵ 5 USC § 552a(d)(1).

family since he could not obtain the new employment opportunity without his records and the FBI had suspended him without pay.

The importance of whistleblowers knowing their rights under the law cannot be understated. The anti-gag provision has been included in almost every appropriations law since 1988 and was permanently codified in federal law by the Whistleblower Protection and Enhancement Act of 2012.⁶ These accountability measures are critically important because they ensure whistleblowers know they have the right to disclose government fraud, waste, and abuse to Congress and Inspectors General. Federal agencies cannot conceal their wrongdoing behind illegal nondisclosure agreements and related documents. Accordingly, we request that you provide answers to the following questions and produce the documents requested below no later than May 3, 2023.

1. What was the legal basis for denying former Special Agent Friend his requested firearms training records?
2. Please provide all records⁷ referring or related to former Special Agent Friend's request to obtain his firearms training records and the decision to deny or delay his request.
3. Please provide all records between the FBI General Counsel Office and the Department of Justice Office of the Inspector General relating to the inclusion of the anti-gag provision in FBI employee nondisclosure agreements and the initiation of an internal investigation Notification form used by the FBI Inspection Division.
4. Please provide all records between the FBI Office of General Counsel and the FBI Inspection Division relating to the inclusion of the anti-gag provision in FBI employee nondisclosure agreements and the initiation of an internal investigation Notification form used by the FBI Inspection Division.
5. Since 2012, how many times has the FBI issued the initiation of an internal investigation Notification form that did not contain the anti-gag provision as required by appropriations law?
6. Since 2012, how many times has the FBI issued a nondisclosure or similar agreement to FBI employees that did not contain the anti-gag provision as required by appropriations law?

⁶ 5 USC § 2302(b)(13).

⁷ "Records" include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (e-mails, email attachments, and any other electronically-created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether or not they resulted in final documents).

Thank you for your prompt review and responses. If you have any questions, please contact our staff.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget



Ron Johnson
Ranking Member
Permanent Subcommittee
On Investigations

Enclosure

cc:

The Honorable Sheldon Whitehouse
Chairman
Committee on the Budget

The Honorable Richard Blumenthal
Chairman
Permanent Subcommittee on Investigations

The Honorable Jeanne Shaheen
Chair
Subcommittee on Commerce, Justice,
Science, and Related Agencies
Committee on Appropriations

The Honorable Jerry Moran
Ranking Member
Subcommittee on Commerce, Justice,
Science, and Related Agencies
Committee on Appropriations

The Honorable Hal Rogers
Chairman

Subcommittee on Commerce, Justice,
Science, and Related Agencies
Committee on Appropriations

The Honorable Matt Cartwright
Ranking Member
Subcommittee on Commerce, Justice,
Science, and Related Agencies
Committee on Appropriations

The Honorable Edda Emmanuelli Perez
General Counsel
Government Accountability Office

**DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
INSPECTION DIVISION**

NOTIFICATION

DATE: 01/18/2023

TO: SAC, JACKSONVILLE

FROM: AD, INSPECTION DIVISION

**TITLE: STEPHEN M. FRIEND
SPECIAL AGENT
JACKSONVILLE FIELD OFFICE
NON-DELEGATED INVESTIGATION
ADMINISTRATIVE INQUIRY**

On 01/13/2023, an internal investigation was initiated concerning an allegation that captioned employee failed to participate in lawful arrest and search and made unauthorized disclosures to the media in violation of 5.6 – Failure to Perform Prescribed Duties, 5.11 – Insubordination, and 4.9 – Unauthorized Disclosure – Classified/Law Enforcement Sensitive/Grand Jury Information.

____ You are requested **not** to inform captioned employee of the initiation of this inquiry or provide him/her with the below described forms until requested to do so by IAS/INSD.

X You are requested to provide captioned employee with this notification of the initiation of this inquiry, along with the attached forms, "The FBI's Disciplinary Process," "FBI Disciplinary Process: Disclosure of Information to Attorneys," and "Nondisclosure Agreement." The employee should be advised that:

- (1) He/she will be interviewed regarding this matter.
- (2) He/she has the opportunity to have an attorney represent him/her in this matter subject to the limitations set forth in the above forms.
- (3) The Employee Assistance Program (EAP) is always available and provides free, confidential, professional assistance to employees and their family members. Employee should be provided an EAP informational brochure with the name(s) and contact number(s) of their division EAP Representative(s) listed.
- (4) He/she has the opportunity, prior to being interviewed or at any time during the course of the investigation, to voluntarily provide to IAS/INSD any documentation, information, names of witnesses, statements of admission, and/or explanation that may assist in the resolution of this inquiry.
- (5) He/she is not to discuss this matter with anyone other than the Inspection Division's Internal Affairs Section (IAS), OPR, the Human Resources Division's Office of Disciplinary Appeals, the FBI's EAP, the FBI's Ombudsman, or an attorney who has signed the appropriate Nondisclosure Agreement. Neither the employee, his/her attorney, nor anyone acting on his/her behalf should contact any witness or potential witness about this inquiry without first obtaining approval from IAS, OPR, or APU. In addition, any redacted materials or other FBI documents he/she reviews in connection with this inquiry are the property of the FBI, and he/she is prohibited from photocopying or removing such documents from FBI space. He/she may take notes concerning the content of such material, but those notes may be used only to facilitate their participation in this disciplinary inquiry and for no other purpose.
- (6) The results of this administrative inquiry will be forwarded to the Security Division for review and evaluation of its effect, if any, on the employee's ability to maintain a security clearance.
- (7) If he/she resigns or retires while under inquiry, and if the AD, OPR, determines based on the investigative record that the employee would have been dismissed if he/she had not resigned or retired while under inquiry, the employee's official personnel file will be annotated accordingly. Resignation or retirement under inquiry may preclude reemployment as an FBI employee or contractor, and may be shared with other Federal agencies and state or local law enforcement agencies in response to employment inquiries.

____ On _____, this matter was referred to the OPR for review and adjudication. You are requested to so inform captioned employee.

Presenting Official: _____ Employee Signature: _____
Presented to employee on: _____
(Date)

Return this notice, signed and dated by the presenting official and employee, to IAS/INSD. Provide one original with attachments (as appropriate) to employee.
Questions or concerns regarding this inquiry can be directed to the INSD Case Supervisor listed below.

ROUTE IN ENVELOPE

2 – Field Office/Division
1 – Security Division (electronically provided)
1 – 263A-HQ-3705513

(INSD Email: HQ_IIU_MAIL@FBI.GOV)
(INSD/FBIHQ: Room 3041)